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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/553,740

10/20/2005

Real Champagne

CHA001

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27137 7590 10/30/2008
DIEDERIKS & WHITELAW, PLC
12471 DILLINGHAM SQUARE, #301
WOODBIDGE, VA 22192

EXAMINER

MCKANE, ELIZABETH L

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

10/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/553,740	Applicant(s) CHAMPAGNE, REAL	
	Examiner ELIZABETH L. MCKANE	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10202005, 07272006, 11302007</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 36, 37, 43, 44, 49, and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Robitaille et al. (US 2002/0085950).

Robitaille et al. teaches a process for humidifying an atmosphere in an ozone sterilization chamber **10** to a target relative humidity. The method of Robitaille et al. includes (a) providing an amount of water in a water reservoir **32** at a temperature T_s at or above a temperature of the chamber atmosphere T_c (paragraphs [0039], [0052]), (b) reducing a pressure in the chamber to a value below the boiling point of water at the reservoir temperature T_s ([0039]), and (c) bringing the reservoir **32** into fluid communication with the chamber **10** so that the water in the reservoir is boiled and enters the chamber ([0039]). After a preselected time, fluid connection between the reservoir and chamber is disconnected. See paragraph [0064]. Robitaille et al. further discloses that “during the humidification period, valve **34** opens and closes several times for a pre-set period of time to control the increasing rate of the relative humidity inside the chamber” (paragraph [0064]). Thus, (b) and (c) are repeated a plurality of times because each time the valve is closed, the water vapor is absorbed by articles in the chamber, reducing the pressure of the chamber. This pressure value necessarily remains lower than that in the water reservoir because when the valve re-opens, water

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vapor again flows from the reservoir to the chamber until the valve close again.

Robitaille et al. also teaches that condensation on articles within the chamber is avoided (paragraph [0050]).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 38-42, 45-48, and 51-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robitaille et al..

With respect to claims 38 and 45, as set forth above, Robitaille et al. discloses that “during the humidification period, valve **34** opens and closes several times for a pre-set period of time to control the increasing rate of the relative humidity inside the chamber” (paragraph [0064]). Furthermore, Robitaille et al. teaches that the temperature within the reservoir is preferably maintained in order to prevent

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condensation and freezing of the water. See paragraph [0083]. This is achieved by heating the humidifier (paragraphs [0083], [0052] to at least room temperature. It would have been obvious to one of ordinary skill in the art to control the relative temperatures T_s and T_c *throughout* the sterilization process, including after step (c), in order to prevent condensation and freezing of water within the water reservoir.

As to claims 39, 40, 42, 46- 48, 52, and 53, as Robitaille et al. discloses repeating steps (b) and (c) "several times," it is deemed obvious to one of ordinary skill in the art to repeat the steps any number of times necessary to achieve the desired level of humidity. Moreover, as Robitaille et al. teaches the final water vapor pressure is about 50 mbar (37.5), dependent upon temperature within the sterilization chamber, repeating the steps 10 times would have resulted in each step increasing the water vapor pressure by 3.75 torr. See paragraph [0084].

With respect to claims 41 and 54, it would have been obvious to one of ordinary skill in the art to optimize the temperature of the humidification chamber in order to optimize vaporization of the water and prevent condensation/freezing of the water therein. Determination of an appropriate temperature is well-within the purview of one in the art.

As to claim 51, Robitaille et al. discloses a sterilization chamber **10**, a reservoir **32**, a conduit and valve **34** connecting the reservoir and chamber, a heating means to control the temperature of the reservoir ([0052]), a heating means to control the temperature of the sterilization chamber (last two sentences of [0083]), a chamber pressure sensor **104**, a vacuum pump **40**, and a processor **108** for controlling the entire

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sterilization apparatus and process. Although Robitaille et al. fails to specifically enumerate temperature sensors within the reservoir and chamber, it would have been obvious to include such as Robitaille et al. teaches that it is necessary to control both of these temperatures for optimization of water vaporization and prevention of condensation/freezing.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH L. MCKANE whose telephone number is (571)272-1275. The examiner can normally be reached on Mon-Fri; 5:30 a.m. - 2:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth L McKane/
Primary Examiner, Art Unit 1797

elm
27 October 2008